

ENFORCEMENT DECREE OF THE TRADEMARK ACT

Wholly Amended by Presidential Decree No. 13081, Aug. 28, 1990
Amended by Presidential Decree No. 13747, Oct. 27, 1992
Presidential Decree No. 13870, Mar. 6, 1993
Presidential Decree No. 15578, Dec. 31, 1997
Presidential Decree No. 17249, Jun. 27, 2001
Presidential Decree No. 18312, Mar. 17, 2004
Presidential Decree No. 18901, Jun. 30, 2005
Presidential Decree No. 20125, Jun. 28, 2007
Presidential Decree No. 20729, Feb. 29, 2008
Presidential Decree No. 21582, Jun. 30, 2009
Presidential Decree No. 22112, Apr. 7, 2010

Article 1 (Purpose)

The purpose of this Decree is to provide matters delegated by the Trademark Act and other matters to implement such delegated matters.

<Amended by Presidential Decree No. 18901, Jun. 30, 2005>

[This Article Newly Inserted by Presidential Decree No. 17249, Jun. 27, 2001]

Article 1-2 (Matters to be Included in Articles of Association concerning Use of Collective Marks)

(1) For the purpose of the former part of Article 9 (3) of the Trademark Act (hereinafter referred to as the “Act”), “matters concerning the use of the collective mark as prescribed by Presidential Decree” means the following matters:

1. Matters concerning the qualifications and conditions for entry and withdrawal for the members who use the collective mark;
2. Matters concerning the conditions for use of the collective mark;
3. Matters concerning the sanctions against those violating the provisions of subparagraph 2;
4. Other matters necessary for using the collective mark.

(2) In cases of a geographical collective mark, it shall include the following matters in addition to the matters referred to in each subparagraph of paragraph (1):

1. Specific quality, reputation, or other specific characters of the goods;

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2. Intrinsic relationship between the geographic surroundings, and specific quality, reputation, or other specific characters of the goods;
3. Area which is the object of geographical indication;
4. Self-management standards and methods of maintenance of the specific quality, reputation, or other specific characters of the goods.

[This Article Wholly Amended by Presidential Decree No. 18901, Jun. 30, 2005]

Article 1-3 (Documents Evidencing Compatibility with Definition of Geographical Indication)

For the purpose of the latter part of Article 9 (3) of the Act and the latter part of Article 86-16 (3) of the Act, “documents attesting to the fact that it conforms to the definition of geographical indication” means the following documents:

1. Papers regarding specific quality, reputation or other specific characters of the goods;
2. Papers regarding intrinsic relationship between the geographic surroundings and the specific quality, reputation or other specific characters of the goods;
3. Papers regarding the area which is the object of geographical indication;
4. Papers evidencing that the legal person being the applicant of geographical collective mark consists solely of persons operating businesses of production, manufacture or processing of the goods that can bear the geographical indication;
5. Papers evidencing that the geographical indication is protected in the country of origin (limited to cases of applying for registration of geographical collective mark regarding foreign geographical indications).

[This Article Newly Inserted by Presidential Decree No. 18901, Jun. 30, 2005]

Article 1-4 (Submission of Opinions by Local Governments concerning Application for Registration of Geographical Collective Marks)

(1) The Commissioner of the Korea Intellectual Property Office may hear opinion of the relevant local government on the following matters regarding the examination of an application for registration of geographical collective mark, and he/she may, when necessary, ask for cooperation, such as submission of data:

1. Matters regarding the production, manufacture, processing and distribution of the goods applicable to the geographical indication;

2. Matters regarding the present conditions of producers' organization, etc. of the goods applicable to the geographical indication, and whether the applicant is qualified or able to represent the producers, etc. of the area;
 3. Other matters regarding the requirements for registration of geographical collective mark, such as intrinsic relationship between the characteristics of the goods applicable to the geographical indication and the geographic surroundings, and the specific quality of the goods.
- (2) The head of a local government may submit his/her opinion on the following matters regarding an application for registration of geographical collective mark to the Commissioner of the Korean Intellectual Property Office, and when necessary for the proper protection of such geographical indication, he/she may consult or coordinate with the applicant:
1. Whether the applicant, regarding production, manufacture, processing, etc. of the relevant goods, is qualified or able to represent the producers, etc. of the area;
 2. Whether the characteristics of the goods applicable to the geographical indication, the area applicable to the geographical indication, the self-management standards, etc. are proper.

[This Article Newly Inserted by Presidential Decree No. 18901, Jun. 30, 2005]

Article 2 (Transfer of Collective Mark Registration Applications, etc.)

Any person who intends to obtain permission for the transfer of a collective mark registration application under the proviso to Article 12 (9) of the Act and for the transfer of a collective mark right under the proviso to Article 54 (9) of the Act shall file an application for permission for the transfer prescribed by Ordinance of the Ministry of Knowledge Economy, with the Commissioner of the Korean Intellectual Property Office, together with the following documents: *<Amended by Presidential Decree No. 13870, Mar. 6, 1993; Presidential Decree No. 17249, Jun. 27, 2001; Presidential Decree No. 20729, Feb. 29, 2008; Presidential Decree No. 22112, Apr. 7, 2010>*

1. Documents certifying merger of corporations;
2. Articles of association of the corporation surviving the merger. In such cases, the relevant articles of association shall include matters referred to in Article 1-2.

Article 2-2 (Designation Standards, etc. for Specialized Investigation Agencies)

- (1) The Commissioner of the Korean Intellectual Property Office shall

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designate a legal entity that fully satisfies the following requirements as a specialized investigation agency referred to in Article 22-2 (1) of the Act (hereinafter referred to as “specialized investigation agency”): *⟨Amended by Presidential Decree No. 20125, Jun. 28, 2007; Presidential Decree No. 22112, Apr. 7, 2010⟩*

1. To possess a database of documentary records and equipment necessary for trademark inspection;
2. To secure an organization exclusively dedicated to trademark inspection and not less than ten human resources;
3. To have the work process guidelines for securing the independence and fairness of the work of trademark inspection;
4. To be equipped with a security system for preventing the leakage of confidential information relating to trademark inspection.

(2) No specialized investigation agency designated under paragraph (1) shall conduct inspection work in an impartial manner. *⟨Amended by Presidential Decree No. 22112, Apr. 7, 2010⟩*

(3) Any person who intends to be designated as a specialized investigation agency shall submit an application for designation of specialized investigation agency accompanied by documents evidencing that requirements under each subparagraph of paragraph (1) are fully satisfied, to the Commissioner of the Korean Intellectual Property Office. *⟨Amended by Presidential Decree No. 22112, Apr. 7, 2010⟩*

(4) Detailed standards for the securing of a database of documentary records, equipment, dedicated organization and human resources, and detailed standards for the handling of trademark inspection work and concrete standards for a security system and matters concerning the operation of a specialized investigation agency under each subparagraph of paragraph (1) shall be determined and announced by the Commissioner of the Korean Intellectual Property Office. *⟨Newly Inserted by Presidential Decree No. 22112, Apr. 7, 2010⟩*

[This Article Newly Inserted by Presidential Decree No. 15578, Dec. 31, 1997]

Article 2-3 (Procedures, etc. for Request of Trademark Inspection)

(1) The Commissioner of the Korean Intellectual Property Office may request a specialized investigation agency to inspect a trademark for an application for trademark registration which he/she deems necessary for the inspection in accordance with Article 22-2 (1) of the Act.

(2) Where the head of a specialized investigation agency has received a

request for trademark inspection referred to in paragraph (1) from the Commissioner of the Korean Intellectual Property Office, he/she shall promptly notify the Commissioner of the Korean Intellectual Property Office of the results of the inspection. *<Amended by Presidential Decree No. 17249, Jun. 27, 2001>*

(3) Where the results of inspection referred to in paragraph (2) are deemed unsatisfactory, the Commissioner of the Korean Intellectual Property Office may ask the specialized investigation agency for a re-inspection by specifying the scope, etc. of inspection.

(4) Paragraph (2) shall apply *mutatis mutandis* to re-inspections under paragraph (3).

[This Article Newly Inserted by Presidential Decree No. 15578, Dec. 31, 1997]

Article 2-4 (Subject Matter of Preferential Examinations)

“Applications for trademark registration prescribed by Presidential Decree which are deemed requiring urgent disposal, including cases where an applicant for the trademark registration is using the trademark, the application of trademark registration of which was filed, for all of the designated goods” in Article 22-4 (2) 2 of the Act means any of the following cases:

1. Where an applicant for trademark registration is deemed using the trademark, the application for trademark registration of which is filed, for all of the designated goods;
2. Where an application for trademark registration is deemed made by an application for a trial on cancellation under Article 8 (5) of the Act;
3. Where an application is deemed the application for registration of a collective mark filed by a corporation jointly established by no less than five small and medium business proprietors under Article 18-2 of the Enforcement Decree of the Government Procurement Act;
4. Where it is deemed evident that the ground for applying for the trademark registration is that the trademark under application for trademark registration is being prepared for using for all of the designated goods, in addition to grounds under subparagraphs 2 and 3.

[This Article Newly Inserted by Presidential Decree No. 22112, Apr. 7, 2010]

Article 2-5 (Decision on Preferential Examinations)

(1) A person who intends to apply for a preferential examination under Article 22-4 (2) of the Act shall submit, to the Commissioner of the Korean Intellectual Property Office, an application for preferential examination

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and accompanying documents determined by Ordinance of the Ministry of Knowledge Economy.

(2) The Commissioner of the Korean Intellectual Property Office shall decide whether to conduct a preferential examination, upon receiving an application for preferential examination under paragraph (1).

(3) Necessary matters concerning decision on the preferential examination under paragraph (2) shall be determined and announced by the Commissioner of the Korean Intellectual Property Office.

[This Article Newly Inserted by Presidential Decree No. 22112, Apr. 7, 2010]

Article 3 (Trademark Gazette)

The Trademark Gazette as prescribed by Article 89 (1) of the Act shall include the following matters: *⟨Amended by Presidential Decree No. 15578, Dec. 31, 1997; Presidential Decree No. 17249, Jun. 27, 2001; Presidential Decree No. 18901, Jun. 30, 2005; Presidential Decree No. 20125, Jun. 28, 2007; Presidential Decree No. 22112, Apr. 7, 2010⟩*

1. For the public notice on application under Article 24 (2) of the Act (including cases applicable *mutatis mutandis* under Articles 49 (3) and 81 (1) of the Act), the matters in the following items:
 - (a) Name and address of the applicant (in cases of a corporation, its title and the location of its place of business);
 - (b) Trademark;
 - (c) Designated goods and classification of categories thereof;
 - (d) Number and date of the application (in cases of an international application deemed an application for trademark registration under the Act pursuant to Article 86-14 (1) of the Act, the number of international registration, and the date of international registration or the date of subsequent designation pursuant to paragraph (2) of the same Article);
 - (e) Number and date of the public notice on application;
 - (f) Indication that shows the identity of the trademark, if the trademark involved is a three-dimensional trademark, a color trademark, a hologram trademark, a motion trademark or any other trademark visually identifiable;
 - (g) Registration number of registered trademark to which designated goods are to be added, or number of the trademark registration application (limited to an additional registration application for designated goods);

- (h) Matters, other than those prescribed in items (a) through (g), which are related to a trademark registration application or additional registration application for designated goods;
 - (i) Purport indicating that it falls under Article 6 (2) of the Act (limited to application for trademark registration made a decision of publication by falling under the same paragraph);
 - (j) Summary of the articles of association (limited to cases of collective mark and collective mark with geographic sign);
 - (k) Purport indicating that it is the collective mark with geographic sign (limited to cases of collective mark with geographic sign);
 - (l) Explanation on the trademark involved, if it is a trademark only in a color or a combination of colors, a hologram trademark, a motion trademark or any other trademark visually identifiable;
 - (m) Matters concerning *ex officio* correction under Article 24-3 of the Act;
2. Matters, other than those referred to in subparagraph 1, which are to be included under the Act and this Decree;
3. Matters concerning the trademark, which the Commissioner of the Korean Intellectual Property Office deems necessary to be included.

Article 4 (Standards for Imposition of Fines for Negligence)

- (1) The standards for imposition of a fine for negligence under Article 98 (1) of the Act shall be as specified in attached Table.
- (2) The Commissioner of the Korean Intellectual Property Office may decrease or increase the amount of a fine for negligence under attached Table within the extent of 1/2 thereof in consideration of the degree and number of times of violation, and the motive and consequence, etc. of offenses: *Provided*, That in cases of increasing such amount, it shall not exceed the upper limit of the amount of a fine for negligence under Article 98 (1) of the Act.

[This Article Wholly Amended by Presidential Decree No. 21582, Jun. 30, 2009]

Article 5 (Application *Mutatis Mutandis*)

- (1) The provisions of Article 18 of the Enforcement Decree of the Patent Act shall apply *mutatis mutandis* to the applications, requests and other procedures relating to the trademark registration. In this case, the term “trial” in Article 18 (3) of said Decree shall be read as “objection against trademark registration and trial”. *<Amended by Presidential Decree No. 20125, Jun. 28, 2007>*

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(2) The provisions of Article 8 of the Enforcement Decree of the Patent Act shall apply *mutatis mutandis* to the examiner, the trial examiner, the presiding trial examiner and the President of the Korean Intellectual Property Tribunal. *<Amended by Presidential Decree No. 15578, Dec. 31, 1997: Presidential Decree No. 18901, Jun. 30, 2005>*

ADDENDUM

This Decree shall enter into force on September 1, 1990.

ADDENDUM *<Presidential Decree No. 13747, Oct. 27, 1992>*

This Decree shall enter into force on November 1, 1992.

ADDENDA *<Presidential Decree No. 13870, Mar. 6, 1993>*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 through 4 Omitted.

ADDENDUM *<Presidential Decree No. 15578, Dec. 31, 1997>*

This Decree shall enter into force on March 1, 1998.

ADDENDUM *<Presidential Decree No. 17249, Jun. 27, 2001>*

This Decree shall enter into force on July 1, 2001: *Provided*, That the amended provisions of subparagraph 1 (d) of Article 3 shall enter into force on the date of taking effect on the Republic of Korea of the Protocol relating to the Madrid Agreement concerning the International Registration of Marks.

[Enforced on April 10, 2003 under the Treaty No. 1625 (Official Gazette dated March 19, 2003)]

ADDENDUM *<Presidential Decree No. 18312, Mar. 17, 2004>*

This Decree shall enter into force on the date of its promulgation.

ADDENDA *<Presidential Decree No. 18901, Jun. 30, 2005>*

- (1) (Enforcement Date) This Decree shall enter into force on July 1, 2005.
- (2) (Applicability to Matters of Description in Articles of Incorporation) The amended provisions of Article 1-2 (1) shall apply to applications filed on or after the enforcement of this Decree.

ADDENDUM *〈Presidential Decree No. 20125, Jun. 28, 2007〉*

This Decree shall enter into force on July 1, 2007.

ADDENDA *〈Presidential Decree No. 20729, Feb. 29, 2008〉*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDUM *〈Presidential Decree No. 21582, Jun. 30, 2009〉*

This Decree shall enter into force on July 1, 2009.

ADDENDUM *〈Presidential Decree No. 22112, Apr. 7, 2010〉*

This Decree shall enter into force on July 28, 2010.